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09/843,289	04/24/2001	Antonio Atwater	338528002US1	7918
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EXAMINER				
NGUYEN, PHUONGCHAU BA				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/843,289

Applicant(s)

ATWATER ET AL.

Examiner

PHUONGCHAU BA NGUYEN

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-100 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-100 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Claim Objections

1. Claim 35 is objected to because of the following informalities: "Error! Reference source not found" should be replaced with ---25--- (see claim set filed 11/06/07). Appropriate correction is required.

Claim Rejections – 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 25, 27, 29, 36, 38, 41-42, 45-47, 49-50, 54-55, 57-58, 61, 68, 70-71, 74-75, 77-78, 80, 81, 84, 91, 96-97, 100 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1).

Regarding claims 25, 46, 58, 75, 81,

Rogers (6,346,964) discloses a method in a computer system for distributing lists of available channels to subscriber units, the method comprising:

receiving from a subscriber unit a request for a list of available channels (programs, see col.12, lines 45-48 wherein upon user's selected program, the user would be tuned to the selected channel having the selected program that will be playing on the selected channel-emphasis added, see also col.9, lines 34-49), the request including information identifying a subscriber (fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program-emphasis added), and upon receiving the request,

identifying one or more available channels that the identified subscriber is permitted to access (fig.7a, step 702), and

sending to the subscriber unit a response to the received request with an indication of the identified channels, identifying the IP multicast group assigned to each identified channel (fig.7a, step 702).

Rogers does not explicitly disclose the request being sent using HTTP protocol and each channel being assigned an IP multicast group. However, in the same field of endeavor, Monteiro discloses a method and apparatus for providing audio and/or visual communication services in real time to a multiplicity of identifiable user on communication network, such as Internet (0002 & 0004). Therefore, it would have been obvious to an artisan to apply Monteiro's teaching to Roger's system with the motivation being to control which user to receive the real time information.

Regarding claims 27, 47,

Rogers discloses wherein the identifying of one or more available channels identifies less than all of the available channels (fig.7a, step 703 as when the user selected a program on one of the available channels, i.e., at a particular point in time, each channel comprises a program—emphasis added).

Regarding claims 29, 49, 61, 84,

Rogers discloses wherein available channels are provided to the computer system by receiving from a plurality of content providers indications of channels that are made available by that content provider (fig.7a, step 702 as a list of available programs from the directory (content providers) at a particular point in time on different available channels, i.e., premium channels having premium programs which had movies/video for available for viewing at a certain time—emphasis added).

Regarding claims 36, 50, 68, 78, 91,

Rogers discloses wherein the computer system is located at a central office (controller, see abstract).

Regarding claims 38, 70, 93,

Monteiro further discloses wherein an available channel is a channel whose data is currently being multicasted (0004).

Regarding claims 41, 54, 96,

Rogers discloses providing a subscribed channel list for a subscriber that indicates the channels which the subscriber is permitted to access (fig.7a, step 702 as a list of available programs at a particular point in time on different available channels, i.e., premium channels having premium programs which had movies/video for available for viewing at a certain time--emphasis added).

Regarding claims 42, 55, 71, 80, 97,

Rogers discloses wherein data for a channel is received at the computer system and forwarded to the subscriber unit (fig.7a, step 702 when controller transmits a list of available programs to users, col.12, lines 31-39).

Regarding claims 45, 57, 74, 100,

Rogers discloses wherein the request is sent in response to the subscriber requesting to view the list (fig.7a, step 702 when controller

transmits a list of available programs to a user per user's request at step 701 – fig.7a, col.12, lines 31–39).

4. Claims 33–34, 65–66, 88–89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1) as applied to claims 25, 46, 75, 81 above, and further in view of Alexanders (6,324,163) .

Regarding claims 33, 65, 88,

Rogers discloses all the claimed limitations, except wherein the channel source address is an ATM channel.

However, in the same field of endeavor, Alexander (6,324,163) discloses wherein the channel source address is an ATM channel (col.2, lines 40–44). Therefore, it would have been obvious to provide data over ATM network unicastly.

Regarding claims 34, 66, 89,

Rogers discloses all the claimed limitations, except wherein the channel source address is an ATM virtual path and transmission circuit.

However, in the same field of endeavor, Alexander (6,324,163) discloses wherein the channel source address is an ATM virtual path and transmission circuit (col.2, lines 40–44 wherein the VCC is ATM virtual path and the transmission circuit is inherent in the transmit functionality as when the data being transmitted to a destination—emphasis added). Therefore, it would have been obvious to apply Alexander's teaching to Rogers's system with the motivation being to provide data over ATM network unicastly.

5. Claims 28, 30–31, 37, 48, 51, 60, 62–63, 69, 76, 79, 83, 85–86, 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1) as applied to claims 25, 46, 58, 75, 81 above, and further in view of Hari (IEEE-1996, Techniques for Improving the Capacity of Video on Demand).

Regarding claims 28, 48, 60, 76, 83,

Rogers discloses all claimed limitations, except wherein the response is sent via unicast to the subscriber unit.

However, in the same field of endeavor, Hari discloses wherein the response is sent via unicast to the subscriber unit (page 311, right column, 42-46). Therefore, it would have been obvious to an artisan to apply Hari's teaching Rogers's system with the motivation being to provide one user requesting a video.

Regarding claims 30, 62, 85

Rogers discloses all the claimed limitations, except wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol.

However, in the same field of endeavor, Hari discloses wherein an indication that a channel is made available by a content provider is sent using a session announcement protocol (abstract, lines 8-11; page 309, right column, lines 16-17). Therefore, it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user

the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.

Regarding claims 31, 63, 86,

Rogers discloses all the claimed limitations, except wherein each available channel has a channel source address that is provided by the content provider.

However, in the same field of endeavor, Hari discloses wherein each available channel has a channel source address that is provided by the content provider (movies/videos being broadcasted for pay per view or on-demand on cable TV from video server, fig.1). Therefore, it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.

Regarding claims 37, 51, 69, 79, 92,

Rogers discloses all the claimed limitations, except wherein a subscriber unit is connected to the computer system via a DSL connection.

However, in the same field of endeavor, Hari discloses wherein a subscriber unit is connected to the computer system via a DSL connection (page 308, right column, third paragraph). Therefore, it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to improve the capacity of video on demand system.

6. Claims 26, 59, 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1) as applied to claims 25, 46, 58, 75, 81 above, and further in view of DeSimone (6,011,782) and Cameron (US2005/0028206 A1).

Regarding claims 26, 59, 82,

Rogers discloses all the claimed limitations, except (1a) when the subscriber selects to access a channel indicated in the response, the subscriber unit sends to an IP router a request to join the IP multicast group assigned to

the channel selected to be accessed and whereby the IP router routes the data of the selected channel to the subscriber unit (claims 59, 82), (1b) the request to join the IP multicast group being an Internet Group Management Protocol (IGMP) request (claim 26).

However, in the same field of endeavor, DeSimone discloses when the subscriber selects to access a channel indicated in the response, the subscriber unit sends to an IP router a request to join the IP multicast group assigned to the channel selected to be accessed and whereby the IP router routes the data of the selected channel to the subscriber unit (abstract, lines 7-16), corresponding to (1a). Therefore, it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide conference over IP.

The modified Rogers does not explicitly disclose (1b) the request to join the IP multicast group being an Internet Group Management Protocol (IGMP) request (claim 26). However, in the same field of endeavor, Cameron (US2005/0028206 A1) further an IGMP request to join, see 0071, corresponding to (1b). Therefore, it would have been obvious to an artisan to

apply Cameron's teaching to the modified Rogers system with the motivation being to provide the selected channel to user (PC) upon request to tune in the request channel, i.e., web channel.

7. Claims 32, 35, 40, 44, 53, 64, 67, 73, 87, 90, 94-95, 99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1) as applied to claims 25, 46, 58, 75, 81 above, and further in view of DeSimone (6,011,782)

Regarding claims 32 & 40, 53, 64, 94-95,

Rogers discloses all the claimed limitations, except wherein the channel source address is an IP address (claims 32, 40, 53, 64, 94-95)

However, in the same field of endeavor, DeSimone discloses wherein the channel source address is an IP address (abstract, lines 9-11), corresponding to (claims 32, 40, 53, 64, 94-95). Therefore, it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation

being to provide real time interactive distribution of multimedia information using the multicast IP service.

Regarding claim 35, 67, 90,

Rogers discloses all the claimed limitations, except wherein when a subscriber selects to receive an available channel indicated in a response, the subscriber unit sends a request to join the IP multicast group associated with the selected channel (claims 67, 90), the subscriber unit adapted to leave the IP multicast group via a sent Internet Group Management Protocol (IGMP) request to leave the multicast group (claim 35).

However, in the same field of endeavor, DeSimone discloses wherein when a subscriber selects to receive an available channel indicated in a response, the subscriber unit sends a request to join the IP multicast group associated with the selected channel (abstract). Therefore, it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide a conference to only the requested client.

Regarding claims 44, 73, 99,

Rogers discloses all the claimed limitations, except wherein a multicast group is identified by an IP address.

However, in the same field of endeavor, DeSimone discloses wherein a multicast group is identified by an IP address (abstract). Therefore, it would have been obvious to an artisan to apply DeSimone's teaching to Rogers's system with the motivation being to provide packets only to the requested client over the multicast IP network.

8. Claims 39, 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1) as applied to claims 25, 46, 58, 75, 81 above, and further in view of Giroir (7,051,103)

Regarding claims 39, 52,

Rogers discloses all the claimed limitations, except (1) wherein the subscriber is identified using a media control access, the media access control address obtained from an Internet Protocol address via an Address Resolution Protocol.

However, in the same field of endeavor, Giroir further discloses an Address Resolution Protocol (ARP) request comprising the Internet Protocol (IP) address of a server the SNA client wants to access, sending an ARP response to the SNA client, the ARP response comprising the Medium Access Control (MAC) address of the access device, corresponding to (1). Therefore, it would have been obvious to an artisan to apply Giroir's teaching to Rogers's system with the motivation being to provide real time interactive distribution of multimedia information using the multicast IP service.

9. Claims 43, 56, 72, 98 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rogers (6,346,964) in view of Monteiro (US 2006/0282544 A1), and further in view of Acharya (5,903,559).

Regarding claims 43, 56, 72, 98,

Rogers discloses all the claimed limitations, except wherein data received at the computer system is sent via a switched virtual circuit.

However, in the same field of endeavor, Acharya (5.903,559) discloses wherein data received at the computer system is sent via a switched virtual circuit (col.10, lines 42–55).

Therefore, it would have been obvious to an artisan to apply Acharya's teaching to Rogers's system with the motivation being to provide transmits data as a series of variable length packets, each having a circuit number that identifies its source and destination address.

Response to Amendment

10. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

A/. Applicant argued that Rogers do not teach "receiving from a subscriber unit a request for a list of available channels, the request including information identifying a subscriber and being sent using HTTP protocol" (remarks claims 26, 46, 58, 75, 81).

In reply, applicant is directed to programs, see col.12, lines 45–48 wherein upon user's selected program, the user would be tuned to the selected

channel having the selected program that will be playing on the selected channel—emphasis added, see also col.9, lines 34–49, for receiving from a subscriber unit a request for a list of available channels, and fig.7a, step 701, the identity of the subscriber is inherent in the request so that the server could be able to send back a list of available program—emphasis added, for the request including information identifying a subscriber. It is noticed that without the information identifying a subscriber's request, the switch would not know which user to send the list of available programs to, emphasis added. Thus, the information identifying a subscriber is inherent at the user's request.

Also, the rejection of claim 25 indicated that Rogers does not explicitly disclose the request being sent using HTTP protocol and each channel being assigned an IP multicast group. However, in the same field of endeavor, Monteiro discloses a method and apparatus for providing audio and/or visual communication services in real time to a multiplicity of identifiable user on communication network, such as Internet (0002 & 0004). Therefore, it would have been obvious to an artisan to apply Monteiro's teaching to Roger's system

with the motivation being to control which user to receive the real time information.

In response to applicant's argument that no prima facie criteria to combine Monteiro with Rogers, the fact that applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

B/. Applicant argued that Rogers does not teach "wherein the identifying of one or more available channels identifies less than all of the available channels" (remarks claims 27, 47).

In reply, applicant is directed to fig.7a, step 703 as when the user selected a program on one of the available channels, i.e., at a particular point in time, each channel comprises a program—emphasis added.

C/. Applicant argued that none of the applied portions of the references relied upon in the office action, whether alone or in combination, establishing a prima facie case of obviousness to the claim 28 rejection, rather hindsight.

In reply, applicant is directed to claim 28 rejection wherein the reason for combined is to provide a user requesting a video program. Rogers's system is a cable providing video program on each channel to a user upon request.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

D/. Applicant argued Rogers does not teach "wherein available channels are provided to the computer system by receiving from a plurality of content providers' indications of channels that are made available by each content provider".

In reply, applicant is directed to fig.7a, step 702 as a list of available programs from the directory (content providers) at a particular point in time on different available channels, i.e., premium channels having premium programs which had movies/video for available for viewing at a certain time-emphasis added, see also fig. 8A-802 showing the switch got the information of available channels from the directory.

E/. Applicant argued that Hari does not disclose claim 30 limitation and no reason to combine Hari to Rogers's system.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Rogers discloses a list of available channels thus having the session features. Hari further discloses the type of session (i.e., session announcement protocol) in which the description of the channel's programs being broadcasted. To apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.

F/. Applicant argued no motivation to combine to claim 31 rejection. Also, claims 32-100 rejections have no motivation to combine, rather hindsight.

In reply, applicant is directed to claim 31 rejection wherein Hari discloses wherein each available channel has a channel source address that is provided by the content provider (movies/videos being broadcasted for pay per view or on-demand on cable TV from video server, fig.1), corresponding to each available channel has a channel source address that is provided by the content

provider. Therefore, it would have been obvious to an artisan to apply Hari's teaching to Rogers's system with the motivation being to provide a user the flexibility of selecting the content as well as scheduling the program that the user wants to watch without disturbed.

Likewise, applicant is directed to claims 32-100 rejections in this office action where reasons to combine were presented corresponding to the evidences found from references relevant to the claimed invention. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PHUONGCHAU BA NGUYEN whose

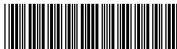
telephone number is (571)272-3148. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/PHUONGCHAU BA NGUYEN/
Examiner, Art Unit 2616

/FIRMIN BACKER/
Supervisory Patent Examiner, Art Unit 2616

Application Number

Application/Control No.

09/843,289

Applicant(s)/Patent under
Reexamination

ATWATER ET AL.

Examiner

PHUONGCHAU BA NGUYEN

Art Unit

2616